



Virginia  
Regulatory  
Town Hall

## Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	State Water Control Board
<b>VAC Chapter Number:</b>	9 VAC 25-820
<b>Regulation Title:</b>	General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia
<b>Action Title:</b>	Adopt new regulation
<b>Date:</b>	April 13, 2005

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

### Purpose\*

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The rulemaking is proposed in order to meet the requirements of §62.1-44.19:14 of the Code of Virginia, which directs the State Water Control Board to issue a Watershed General Virginia Pollutant Discharge Elimination System Permit authorizing point source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries. The 2000 Chesapeake Bay Agreement and multi-state cooperative and regulatory initiatives establish allocations for nitrogen and phosphorus delivered to the Chesapeake Bay watershed. These initiatives will require public and private point source dischargers of nitrogen and phosphorus to achieve significant reductions of these nutrients to meet the cap load allocations. The Virginia General Assembly found that adoption and utilization of a watershed general permit and market-based point source nutrient credit trading program will assist in meeting these cap load allocations cost-effectively and as soon as possible in keeping with the 2010 timeline and objectives of the Chesapeake 2000 agreement, accommodating continued growth and economic development in the Chesapeake Bay watershed, and providing a foundation for establishing

market-based incentives to help achieve the Chesapeake Bay's non-point source reduction goals.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

The basis of this regulation is §62.1-44.19:14 of the Code of Virginia as amended in the 2005 session of the General Assembly. Section 62.1-44.19:14 directs the State Water Control Board to issue a Watershed General Virginia Pollutant Discharge Elimination System (VDPES) Permit authorizing point source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries. Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program. Legal authority for issuing general permits under State Water Control Law is §62.1-44.15(5), 15(10), and 15(14).

### Need\*

*Please detail the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

The rulemaking is essential to the protection of the health, safety or welfare of the citizens of the Commonwealth. Proper treatment of wastewater protects water quality and living resources of Virginia's waters for consumption of fish and shellfish, recreational uses, and conservation in general. VPDES permits are one mechanism for implementing this protection. Issuing a VPDES permit on a watershed basis allowing trading between dischargers is predicted to provide a mechanism to ensure cost-effective reduction of pollutants.

### Substance\*

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed.*

This will be a new general permit regulation. In accordance with §62.1-44.19:14, the general permit will include 1) wasteload allocations for total nitrogen and total phosphorus for each permitted facility expressed as annual mass loads, 2) a schedule requiring compliance with the waste load allocations, 3) monitoring and reporting requirements, 4) a procedure requiring

affected owners or operators to secure general permit coverage, 5) a procedure for efficiently modifying the list of facilities covered by the general permit, and 6) such other conditions as the Board deems necessary to carry out the provisions of State and Federal law.

### Alternatives\*

*Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered and will be considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.*

Through a series of technical advisory committees, the Department of Environmental Quality will work in conjunction with other state and federal agencies, the regulated community, other interested stakeholders, and the general public, to develop and evaluate alternatives that are in accordance with state and federal law and regulations governing the discharge of total nitrogen and total phosphorus to state waters.

### Public Participation\*

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate where information on the public meeting (i.e., date, time and place) may be found.*

The Board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal and the costs and benefits of the proposed regulatory action stated in this notice or other alternatives. The Department of Environmental Quality intends to hold multiple public meetings and Technical Advisory Meetings to solicit comments and participation in the regulation development process. The initial public meeting is scheduled for 2:00 p.m. on Wednesday, May 25, 2005 at DEQ's Piedmont Regional Office, 4949-A Cox Rd., Glen Allen, VA 23060. Notice of the time and place of future public meetings and Technical Advisory Committee meetings will be posted to the Virginia Regulatory Town Hall web site and published in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted.

Anyone wishing to submit written comments for the public comment file may do so at the public meetings, by mail to the Department of Environmental Quality (c/o Allan Brockenbrough, P.E.), P.O. Box 10009, Richmond, VA 23240-0009, or by email to [abrockenbrough@deq.virginia.gov](mailto:abrockenbrough@deq.virginia.gov), or by fax at (804)698-4032. Written comments, including email comments must include the name and address of the commenter. In order to be considered, comments must be received by the close of the NOIRA comment period on June 1, 2005.

### Participatory Approach\*

*Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

The Board is using the participatory approach in the development of a proposal. Anyone interested in serving on the Technical Advisory Committee should inform the staff contact by the close of the NOIRA comment period on June 1, 2005.

### Family Impact Statement

*Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The direct impact resulting from the development of a watershed VPDES general permit for the discharge of total nitrogen and total phosphorus from wastewater treatment plants is for the protection of public health and safety and the environment. The adoption of this general permit may increase the cost of wastewater treatment, thereby increasing the user charges paid by residential and commercial customers, potentially decreasing the disposable family income.